

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CASCADES PROJECTION LLC.

Plaintiff.

13 | VS.

14 EPSON AMERICA, INC. and EPSON ELECTRONICS AMERICA, INC..

## Defendants

Case No. 2:15-CV-00258-SJO(RZx)

## ALL CASES

**[PROPOSED] PROTECTIVE  
ORDER**

## 1. PURPOSE AND LIMITS OF THIS ORDER

18       Discovery in this action is likely to involve confidential, proprietary, or  
19 private information requiring special protection from public disclosure and from use  
20 for any purpose other than this litigation. Thus, the Court enters this Protective  
21 Order. This Order does not confer blanket protections on all disclosures or  
22 responses to discovery, and the protection it gives from public disclosure and use  
23 extends only to the specific material entitled to confidential treatment under the  
24 applicable legal principles. This Order does not automatically authorize the filing  
25 under seal of material designated under this Order. Instead, the parties must comply  
26 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not  
27 govern the use at trial of material designated under this Order.

1           **2. DESIGNATING PROTECTED MATERIAL**

2           **2.1 Over-Designation Prohibited.** Any party or non-party who  
3 designates information or items for protection under this Order as  
4 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,”  
5 or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only  
6 designate specific material that qualifies under the appropriate standards. To the  
7 extent practicable, only those parts of documents, items, or oral or written  
8 communications that require protection shall be designated. Designations with a  
9 higher confidentiality level when a lower level would suffice are prohibited. Mass,  
10 indiscriminate, or routinized designations are prohibited. Unjustified designations  
11 expose the designator to sanctions, including the Court’s striking all confidentiality  
12 designations made by that designator. Designation under this Order is allowed only  
13 if the designation is necessary to protect material that, if disclosed to persons not  
14 authorized to view it, would cause competitive or other recognized harm. Material  
15 may not be designated if it has been made public, or if designation is otherwise  
16 unnecessary to protect a secrecy interest. If a designator learns that information or  
17 items that it designated for protection do not qualify for protection at all or do not  
18 qualify for the level of protection initially asserted, that designator must promptly  
19 notify all parties that it is withdrawing the mistaken designation.

20           **2.2 Manner and Timing of Designations.** Designation under this  
21 Order requires the designator to affix the applicable legend (“CONFIDENTIAL,”  
22 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY  
23 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected  
24 material. For testimony given in deposition or other proceeding, the designator  
25 shall specify all protected testimony and the level of protection being asserted. It  
26 may make that designation during the deposition or proceeding, or may invoke, on  
27 the record or by written notice to all parties on or before the next business day, a  
28

1 right to have up to 21 days from the deposition or proceeding to make its  
2 designation.

3                   2.2.1 A party or non-party that makes original documents or  
4 materials available for inspection need not designate them for protection until after  
5 the inspecting party has identified which material it would like copied and produced.  
6 During the inspection and before the designation, all material shall be treated as  
7 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**. After the inspecting  
8 party has identified the documents it wants copied and produced, the producing  
9 party must designate the documents, or portions thereof, that qualify for protection  
10 under this Order.

11                   2.2.2 Parties shall give advance notice if they expect a  
12 deposition or other proceeding to include designated material so that the other  
13 parties can ensure that only authorized individuals are present at those proceedings  
14 when such material is disclosed or used. The use of a document as an exhibit at a  
15 deposition shall not in any way affect its designation. Transcripts containing  
16 designated material shall have a legend on the title page noting the presence of  
17 designated material, and the title page shall be followed by a list of all pages  
18 (including line numbers as appropriate) that have been designated, and the level of  
19 protection being asserted. The designator shall inform the court reporter of these  
20 requirements. Any transcript that is prepared before the expiration of the 21-day  
21 period for designation shall be treated during that period as if it had been designated  
22 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** unless otherwise agreed.  
23 After the expiration of the 21-day period, the transcript shall be treated only as  
24 actually designated.

25                   **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
26 designate does not, standing alone, waive protection under this Order. Upon timely  
27 assertion or correction of a designation, all recipients must make reasonable efforts  
28 to ensure that the material is treated according to this Order.

1                   **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2                   All challenges to confidentiality designations shall proceed under L.R. 37-1  
3 through L.R. 37-4.

4                   **4. ACCESS TO DESIGNATED MATERIAL**

5                   **4.1 Basic Principles.** A receiving party may use designated material  
6 only for this litigation. Designated material may be disclosed only to the categories  
7 of persons and under the conditions described in this Order.

8                   **4.2 Disclosure of CONFIDENTIAL Material Without Further  
9 Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
10 designator, a receiving party may disclose any material designated  
11 CONFIDENTIAL only to:

12                   4.2.1 The receiving party's outside counsel in this action and  
13 employees of outside counsel to whom disclosure is reasonably necessary;

14                   4.2.2 The officers, directors, in-house counsel, and employees  
15 of the receiving party and its parent companies to whom disclosure is reasonably  
16 necessary, and who have signed the Agreement to Be Bound (Exhibit A), and their  
17 support staff;

18                   4.2.3 Experts and consultants retained by the receiving party's  
19 outside counsel of record to whom disclosure is reasonably necessary, and who have  
20 signed the Agreement to Be Bound (Exhibit A), and their support staff;

21                   4.2.4 The Court and its personnel;

22                   4.2.5 Outside court reporters and their staff, professional jury or  
23 trial consultants, and professional vendors to whom disclosure is reasonably  
24 necessary;

25                   4.2.6 During their depositions, witnesses in the action to whom  
26 disclosure is reasonably necessary and who have signed the Agreement to Be Bound  
27 (Exhibit A); and

4.2.7 The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information.

**4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material**

**Without Further Approval.** Unless permitted in writing by the designator, a receiving party may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further approval only to:

4.3.1 The receiving party's outside counsel in this action and employees of outside counsel to whom it is reasonably necessary to disclose the information;

#### 4.3.2 The Court and its personnel:

4.3.3 Outside court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary;

4.3.4 During their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A); and

4.3.5 The author or recipient of a document containing the material, or a custodian or other person who otherwise possessed or knew the information.

#### **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE Material to Experts and Consultants.**

Unless agreed to in writing by the designator:

4.4.1 A party seeking to disclose to an expert or consultant retained by outside counsel of record any information or item that has been

1 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
2 CONFIDENTIAL – SOURCE CODE must first make a written request to the  
3 designator that (1) identifies the general categories of HIGHLY CONFIDENTIAL –  
4 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE  
5 information that the receiving party seeks permission to disclose to the  
6 expert/consultant, (2) sets forth the full name of the expert/consultant and the city  
7 and state of his or her primary residence, (3) attaches a copy of the  
8 expert/consultant's current resume, (4) identifies the expert/consultant's current  
9 employer(s), (5) identifies each person or entity from whom the expert/consultant  
10 has received compensation or funding for work in his or her areas of expertise  
11 (including in connection with litigation) in the past five years, and (6) identifies (by  
12 name and number of the case, filing date, and location of court) any litigation where  
13 the expert/consultant has offered expert testimony, including by declaration, report,  
14 or testimony at deposition or trial, in the past five years. If the expert/consultant  
15 believes any of this information at (4) - (6) is subject to a confidentiality obligation  
16 to a third party, then the expert/consultant should provide whatever information the  
17 expert/consultant believes can be disclosed without violating any confidentiality  
18 agreements, and the party seeking to disclose the information to the  
19 expert/consultant shall be available to meet and confer with the designator regarding  
20 any such confidentiality obligations.

21                   4.4.2 A party that makes a request and provides the information  
22 specified in paragraph 4.4.1 may disclose the designated material to the identified  
23 expert/consultant (and their support staff) unless, within seven days of delivering the  
24 request, the party receives a written objection from the designator providing detailed  
25 grounds for the objection.

26                   4.4.3 All challenges to objections from the designator shall  
27 proceed under L.R. 37-1 through L.R. 37-4.

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1           **5. SOURCE CODE**

2           **5.1 Designation of Source Code.** If production of source code is  
3 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE  
4 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

5           **5.2 Location and Supervision of Inspection.** Any HIGHLY  
6 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made  
7 available for inspection, in a format allowing it to be reasonably reviewed and  
8 searched, during normal business hours or at other mutually agreeable times, at an  
9 office of the designating party's counsel or another mutually agreeable location.  
10 The source code shall be made available for inspection on a secured computer in a  
11 secured room, and the inspecting party shall not copy, remove, or otherwise transfer  
12 any portion of the source code onto any recordable media or recordable device.  
13 The designator may visually monitor the activities of the inspecting party's  
14 representatives during any source code review, but only to ensure that there is no  
15 unauthorized recording, copying, or transmission of the source code.

16           **5.3 Paper Copies of Source Code Excerpts.** The inspecting party  
17 may request paper copies of limited portions of source code that are reasonably  
18 necessary for the preparation of court filings, pleadings, expert reports, other papers,  
19 or for deposition or trial. The designator shall provide all such source code in paper  
20 form, including Bates numbers and the label "HIGHLY CONFIDENTIAL –  
21 SOURCE CODE."

22           **5.4 Access Record.** The inspecting party shall maintain a record of  
23 any individual who has inspected any portion of the source code in electronic or  
24 paper form, and shall maintain all paper copies of any printed portions of the source  
25 code in a secured, locked area. The inspecting party shall not convert any of the  
26 information contained in the paper copies into any electronic format other than for  
27 the preparation of a pleading, exhibit, expert report, discovery document, deposition  
28 transcript, or other Court document. Any paper copies used during a deposition

1 shall be retrieved at the end of each day and must not be left with a court reporter or  
2 any other unauthorized individual.

3 **6. PROSECUTION BAR**

4 Absent written consent from the designator, any individual who receives  
5 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
6 CONFIDENTIAL – SOURCE CODE information shall not be involved in the  
7 prosecution of patents or patent applications concerning the field of the invention of  
8 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or  
9 other affiliate during the pendency of this action and for one year after its  
10 conclusion, including any appeals. “Prosecution” means drafting, amending,  
11 advising on the content of, or otherwise affecting the scope or content of patent  
12 claims or specifications. These prohibitions shall not preclude counsel from  
13 participating in reexamination or *inter partes* review proceedings to challenge or  
14 defend the validity of any patent, but counsel may not participate in the drafting of  
15 amended claims, or advising on the content or otherwise affecting the scope or  
16 content of the amended claims, in any such proceedings.

17 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
18 **PRODUCED IN OTHER LITIGATION**

19 **7.1 Subpoenas and Court Orders.** This Order in no way excuses  
20 non-compliance with a lawful subpoena or court order. The purpose of the duties  
21 described in this section is to alert the interested parties to the existence of this  
22 Order and to give the designator an opportunity to protect its confidentiality interests  
23 in the court where the subpoena or order issued.

24 **7.2 Notification Requirement.** If a party is served with a subpoena  
25 or a court order issued in other litigation that compels disclosure of any information  
26 or items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL  
27 – ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,  
28 that party must:

1                   7.2.1 Promptly notify the designator in writing. Such  
2 notification shall include a copy of the subpoena or court order;

3                   7.2.2 Promptly notify in writing the party who caused the  
4 subpoena or order to issue in the other litigation that some or all of the material  
5 covered by the subpoena or order is subject to this Order. Such notification shall  
6 include a copy of this Order; and

7                   7.2.3 Cooperate with all reasonable procedures sought by the  
8 designator whose material may be affected.

9                   **7.3 Wait For Resolution of Protective Order.** If the designator  
10 timely seeks a protective order, the party served with the subpoena or court order  
11 shall not produce any information designated in this action as CONFIDENTIAL,  
12 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
13 CONFIDENTIAL – SOURCE CODE before a determination by the court where the  
14 subpoena or order issued, unless the party has obtained the designator's permission.  
15 The designator shall bear the burden and expense of seeking protection of its  
16 confidential material in that court.

17                   **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED**  
18                   **MATERIAL**

19                   If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
20 designated material to any person or in any circumstance not authorized under this  
21 Order, it must immediately (1) notify in writing the designator of the unauthorized  
22 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
23 designated material, (3) inform the person or persons to whom unauthorized  
24 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
25 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

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1       **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
2       **OTHERWISE PROTECTED MATERIAL**

3       When a producing party gives notice that certain inadvertently produced  
4 material is subject to a claim of privilege or other protection, the obligations of the  
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
6 This provision is not intended to modify whatever procedure may be established in  
7 an e-discovery order that provides for production without prior privilege review  
8 pursuant to Federal Rule of Evidence 502(d) and (e).

9       **10. FILING UNDER SEAL**

10      Without written permission from the designator or a Court order, a party may  
11 not file in the public record in this action any designated material. A party seeking  
12 to file under seal any designated material must comply with L.R. 79-5.1. Filings  
13 may be made under seal only pursuant to a court order authorizing the sealing of the  
14 specific material at issue. The fact that a document has been designated under this  
15 Order is insufficient to justify filing under seal. Instead, parties must explain the  
16 basis for confidentiality of each document sought to be filed under seal. Because a  
17 party other than the designator will often be seeking to file designated material,  
18 cooperation between the parties in preparing, and in reducing the number and extent  
19 of, requests for under seal filing is essential. If a receiving party's request to file  
20 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then  
21 the receiving party ***may file the material in the public record*** unless (1) ***the*** designator  
22 seeks reconsideration within four days of the denial, or (2) as otherwise  
23 instructed by the Court.

24      **11. FINAL DISPOSITION**

25      Within 60 days after the final disposition of this action, each party shall return  
26 all designated material to the designator or destroy such material, including all  
27 copies, abstracts, compilations, summaries, and any other format reproducing or  
28 capturing any designated material. The receiving party must submit a written

1 certification to the designator by the 60- day deadline that (1) identifies (by  
2 category, where appropriate) all the designated material that was returned or  
3 destroyed, and (2) affirms that the receiving party has not retained any copies,  
4 abstracts, compilations, summaries, or any other format reproducing or capturing  
5 any of the designated material. This provision shall not prevent counsel from  
6 retaining an archival copy of all pleadings, motion papers, trial, deposition, and  
7 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
8 expert reports, attorney work product, and consultant and expert work product, or  
9 copies of such materials located on backup tapes or other not reasonably accessible  
10 systems or storage, even if such materials contain designated material. Any such  
11 archival copies remain subject to this Order.

13 | IT IS SO ORDERED.

15 || Dated: April 28, 2015

Ralph Zarfaty

1 EXHIBIT A  
2  
3

4  
5 AGREEMENT TO BE BOUND  
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8 I, \_\_\_\_\_ [print or type full name], of  
9 \_\_\_\_\_ [print or type full address], declare under  
10 penalty of perjury that I have read in its entirety and understand the Protective Order  
11 that was issued by the United States District Court for the Central District of  
12 California on \_\_\_\_\_ [date] in the case of \_\_\_\_\_ [insert formal  
13 **name of the case and the number and initials assigned to it by the court**]. I  
14 agree to comply with and to be bound by all the terms of this Protective Order, and I  
15 understand and acknowledge that failure to so comply could expose me to sanctions  
16 and punishment for contempt. I solemnly promise that I will not disclose in any  
17 manner any information or item that is subject to this Protective Order to any person  
18 or entity except in strict compliance with this Order.

19 I further agree to submit to the jurisdiction of the United States District Court  
20 for the Central District of California for the purpose of enforcing this Order, even if  
21 such enforcement proceedings occur after termination of this action.

22 I hereby appoint \_\_\_\_\_ [print or type full name] of  
23 \_\_\_\_\_ [print or type full address and  
24 telephone number] as my California agent for service of process in connection with  
25 this action or any proceedings related to enforcement of this Order.

26 Date: \_\_\_\_\_

27 City and State where sworn and signed: \_\_\_\_\_

28 Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_